HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.6593 OF 2002

Between**:**

E.Gopal Reddy

…. Petitioner

A n d

The Secretary to Government
Government of Andhra Pradesh,
Legislative Affairs & Justice Department,
Secretariat Buildings, Hyderabad
and another

….Respondents

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.6593 OF 2002

O R D E R: **(***Per Hon'ble Sri Justice M.Venkateswara Reddy)*

In this writ petition, the petitioner, who served as Subordinate Judge in A.P. Judiciary, is questioning his dismissal from service made in G.O.Ms.No.123 Law (LA & J.Courts.C) Department dated 10-08-2000, issued by the first respondent.

The facts that are necessary for disposal of the

Writ Petition can be set out as under:

The petitioner was appointed as District Munsif in the A.P. State Judicial Service in the year 1981. He was promoted as Subordinate Judge temporarily in the year 1990. He worked as Subordinate Judge at Atmakur from 11-01-1992 to 18-11-1992. Some complaints were received against the officer both by the District Judge and as well as the High Court. The then District Judge, Kurnool, P.W.11, made preliminary enquiry and submitted his report - Ex.P.13 dated 24-10-1992. Thereupon, the petitioner was placed under suspension by the High Court by its order dated 18-11-1992. Thereafter, a regular departmental enquiry was ordered by the High Court on 24-12-1992, appointing the then Additional District Judge, Ananthapur, as the enquiry officer.

The learned Enquiry Officer framed four charges and after filing of the written statement, held enquiry. He examined 13 witnesses as P.Ws.1 to 13 and marked 30 documents as Exs.X-1 to
X-28 and C-1 and C-2.

On appreciation of the evidence and other material placed before him, the learned enquiry officer came to the conclusion that all the four charges framed against the charged officer were proved. The High Court accepted the findings of the enquiry officer and after

following due procedure, passed orders on 19-10-1994, dismissing the petitioner from service. As against the said dismissal orders, the petitioner filed a case in W.P.No.20757 of 1994, on the file of this Court. The said writ petition was allowed by a Division Bench of this Court on 15-02-2000, holding that the impugned orders passed by the High Court cannot be sustained in the light of the judgments of the Apex Court in *T.L.N.CHARY V.HIGH COURT OF ANDHRA PRADESH (AIR 1996 SC 2067) AND REGISTRAR (ADMN.,), HIGH OF ORISSA V. SISIR KANTA SATAPATHY (AIR 1999 SC 3265).* The Division Bench held that the petitioner, who was substantive holder of the post of District Munsif, cannot be dismissed by the High Court, but only by the Governor of Andhra Pradesh, who is the appointing authority for District Munsifs. It may be mentioned here that the appointing authority, as per Rule 2(3) of the A.P. State Judicial Service Rules, for the post of District Munsifs, is the Governor and for the Subordinate Judges' post, it is the High Court. There is no direct recruitment for the post of Subordinate Judges and it is only a promotion post. It is not disputed that at the time of his suspension, the substantive post held by the petitioner was District Munsif and he was working as Subordinate Judge temporarily. While setting aside the dismissal order, the Division Bench of this Court gave liberty to the High Court to send appropriate recommendations to the Governor and take

such other interim measures as may be necessary till the orders of the Governor are communicated. Thereafter, the High Court reconsidered the matter and recommended for dismissal of the charged officer from service to the Governor. The Government of Andhra Pradesh thereafter issued G.O.Ms.No.123, dated 10-08-2000, dismissing the charged officer from service. The following notification was published in the Extraordinary Gazette dated 11-08-2000 of Andhra Pradesh:

NOTIFICATION

"Under Clause (x) of Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the Governor of Andhra Pradesh hereby dismiss Sri E.Gopala Reddy, formerly Sub-Judge, Atmakur, now under suspension, from service with immediate effect."

G.BHAVANI PRASAD,
SECRETARY TO GOVERNMENT,
LEGISLATIVE AFFAIRS & JUSTICE.

It is challenging this notification, the writ petition is filed.

All the four charges relate to the period during which the petitioner worked as Subordinate Judge at Atmakur. The gist of the four charges is –

CHARGE No.1: Indulged in accepting illegal gratification in an organized manner through one Siva, a Court Attender and others in the cases pertaining to land acquisition matters.

CHARGE No.2: Awarded more compensation than the claims made by the claimants in O.P.Nos.1461/87. 1917/87, 1440/87, 1418/87, 1469/87, 1471/87, 1472/87, 1473/87 and 1474/87;

-- Manipulated and made corrections in the records in order to suit his convenience;

-- Awarded heavy compensation in matters where no separate claims were made
(in O.P.No.1472/87 and batch);

-- Accepted post-notified transactions in deciding valuation;

-- Clubbed land acquisition O.Ps of different awards pertaining to different villages in a common enquiry;

-- Made irregular and illegal classification of lands;

-- Has not given opportunity to the Government in filing counters to the claim statements in most of the cases;

-- Prepared depositions of witnesses in advance, leaving some space for filling up O.P numbers and other particulars;

-- Not insisted upon old matters for disposal and took up those matters for extraneous considerations;

-- Indulged in irregular and illegal practices.

CHARGE No.3: moved freely with Siva and others;

-- used to visit Naga lodge at Atmakur in the company of those persons and created an atmosphere and impression that huge compensation would be awarded by him in land acquisition matters on payment of illegal gratification to him. Thus, he brought disrepute to the judicial system and also the post occupied by him.

CHARGE No.4: stayed with his family at Kurnool instead of Headquarters at Atmakur without permission of the District Judge, Kurnool;

-- Used to attend the Court daily by travelling about 140 kms a day.

A common enquiry was held against the petitioner, G.Venkata Kondaiah, formerly Junior Assistant, Sub-Court, Atmakur and H.Chandra Sekhar, formerly Attender, Sub-Court, Atmakur.

In his written statement, the charged officer denied all the allegations and made further submissions to the following effect:

The disgruntled advocates and parties made false and baseless allegations. In the year 1988, he worked as Mobile Magistrate at Ongole for two months. One Siva worked under him as an Attender and because of that acquaintance, he was visiting him now and then. When the petitioner was working as District Munsif, Ongole and Sub-Judge at Narsaraopet and Atmakur, the said Siva was visiting him casually telling the petitioner that he came to that place to meet some of his relations. No advocate or staff member ever complained to him that the said Siva was misusing his name or collecting any amounts. Not even a single instance was given by any of the witnesses that he has shown favour in any particular case, by accepting illegal gratification.

So far as clubbing of cases and their disposal is concerned, he only discharged his duties on the basis of material placed before him. If he had erred, it is open to the aggrieved party to take up matters to the higher Court. There cannot be any departmental enquiry regarding judicial decisions,

unless it is established that the judgment is given on extraneous considerations. His work at Atmakur during the period from 01-05-1992 to 31-08-1992 was found to be satisfactory by the High Court. He never visited Naga lodge at Atmakur and never created an atmosphere and impression that huge compensation would be awarded by him in land acquisition matters on payment of illegal gratification to him. He never brought disrepute to the judicial system. Venkata Reddy and Sai Reddy, the persons who sent petitions to the High Court against him, are not examined. He obtained oral permission from the District Judge, Kurnool for staying at Kurnool, in view of the difficulties experienced by him in securing accommodation at Atmakur and to enable his children to prosecute their studies at Kurnool, where there is a degree college. He used to go to Kurnool occasionally, but not regularly. There was never any allegation that he attended the Court late nor the litigation public were inconvenienced. There is no need for a Subordinate Judge to stay at the headquarters. It is only the Magistrates who have to make themselves available round the clock at the headquarters, as they have to record dying declarations and receive express FIRs.

All the witnesses were cross-examined

by the counsel appearing for the petitioner. The petitioner had not chosen to examine any witness on his behalf nor did he file any documents. But, he filed a detailed written statement in the form of argument attacking the evidence of the witnesses examined. As already stated, the learned enquiry officer found him guilty of all the charges.

The learned counsel for the writ petitioner contended before us that there is no material to come to the conclusion that the petitioner was guilty of misconduct and the major penalty of dismissal imposed on the petitioner is unwarranted; that the charges are *de void* of material particulars and that the enquiry officer is swayed away by the preliminary report in coming to the conclusion. Though in the writ petition it is urged in the grounds that the order is not passed by the Governor and no speaking order is made and the enquiry officer has not recorded the evidence afresh, those grounds are not urged before us. In fact, the dismissal order made by the High Court was set-aside on the ground that the Governor had not passed the dismissal order. The impugned order is made by the Governor. The allegation that the enquiry officer would have recorded the evidence afresh, is a travesty of truth. The petitioner knows that the

Enquiry Officer himself recorded the evidence of 13 witnesses and his counsel cross-examined all of them. The learned counsel has taken us through all the depositions and also through the enquiry report.

Before embarking upon discussion, at the very threshold, we have to make it clear that in writ jurisdiction under Article 226 of the Constitution of India, this Court cannot re-appreciate the evidence as if we are sitting in appeal against the findings of the enquiry officer. We cannot consider even the question about the sufficiency or adequacy of evidence in support of the impugned conclusion of the enquiry officer. However, we are conscious of the fact that if there is no evidence at all in support of the impugned conclusion, we can interfere. But this is not a case where there is no evidence at all. It is not the case of the petitioner that the findings are perverse or vitiated by malafides and no man acting reasonably and with objectivity would have arrived at the findings as arrived at by the enquiry officer. Unlike in criminal law, it is the weight of preponderance of probabilities that would tilt the findings in a departmental enquiry.

The learned Standing Counsel for the second respondent – High Court placed before us a

ruling of the Apex Court rendered in *B.C.CHATURVEDI v. UNION OF INDIA*[1] wherein the Apex Court cautioned, as under:-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When the inquiry is conducted on charges of misconduct by a public servant, the Court/ Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to

the facts of each case."

In *THE HIGH COURT OF JUDICATURE AT BOMBAY V. SHASHIKANT S.PATIL*[2], the Apex Court ruled that adequacy and reliability of evidence in a department enquiry cannot be gone into in the writ petition.

In *STATE OF PUBJAB V. RAM SINGH EX-CONSTABLE*[3], it is held that even a single act of misconduct, if found to be grievous nature, may justify dismissal from service.

With the above principles in mind, we shall now see whether the findings reached by the disciplinary authority are not based on any evidence and the conclusions reached are such that no reasonable person would have ever reached.

CHARGE No.4:

So far as this charge, relating to his stay at Kurnool, is concerned, the petitioner himself had admitted the fact, but he put the blame on the District Judge stating that he accorded oral permission, which is unconvincing. He stated in his written statement that since there is a Degree college at Kurnool and in view of the difficulties experienced by him in securing accommodation at

Atmakur, he stayed at Kurnool. He is working as Subordinate Judge. It is not his case that the other judicial officers working there are not staying at Atmakur; that he could not secure accommodation undoubtedly is a lame excuse pleaded by him. Such averments demonstrate that the petitioner had no regard for truth and to what extent he can stoop down to defend himself, therefore, it needs no further comment to say that he tried to put the blame on the District Judge stating that he took oral permission in a bid to defend himself. In fact, P.W.11, the then District Judge, issued a letter dated 19-09-1992 in Dis.No.8986 calling for the detailed residential address of the Sub-Judge, Atmakur. The petitioner gave a reply dated 20-09-1992 stating that his daughters were studying graduation and, therefore, he had been keeping his family at Kurnool. He pleaded before the enquiry officer that he had taken a room on rent, but no evidence was produced in that regard. Why should the District Judge write a letter if oral permission was obtained? The petitioner passes on the blame to the then District Judge stating he took oral permission. It is there in evidence that t w o Attenders viz., T.Madanna and Chandrasekhar Reddy worked for some period at the residence of the petitioner at Kurnool and he was using car also for going to Kurnool. Apart from the admission of the officer, there is abundant evidence on the charge and it is proved even beyond reasonable doubt.

CHARGE Nos.1 & 3:

These two charges go together. The allegation is that the petitioner was receiving illegal gratification in land acquisition matters in an organized manner through one Siva. As per the own admission of the petitioner, the said Siva worked under him as Attender while the latter worked at Ongole as Mobile Magistrate for two months and he was visiting him frequently wherever the latter worked. This admission must be borne in mind while appreciating the conclusions reached by the enquiry officer. Siva used to stay at Naga lodge at Atmakur and run the show and he is the *prima donna.* On the instructions given by the High Court, the then District Judge, P.W.11, made a surprise visit to the said Naga lodge and found Siva there. P.W.11 visited the lodge accompanied by P.W.12, the then Sheristedar of District Court, Kurnool, and P.W.13, the then III Additional District Judge, Kurnool. P.W.12 acted as a decoy witness. He posed himself as if he is the claimant in a land acquisition matter pending in Atmakur Sub-Court and sought his help. Siva asked him who sent him. P.W.12 told him that somebody gave his address and further stated that he (P.W.12) is a resident of Pamulapadu, owning
5 acres of land. At that juncture, P.W.11 and C.I of Police entered the lodge. P.W.11 took the said Siva into Room No.12 and P.W.12 stayed in the verandah itself. P.W.11

recorded the statement of Siva and Chandrasekhar Reddy. It was found that Siva was staying in the lodge since two or three months prior to that day and he made four or five visits to Atmakur and on each occasion he used to stay two or three days in the said lodge. In fact, the statement of the Manager of the lodge was also recorded by P.W.11. It is the surprise visit made by the District Judge at the instance of the High Court that made the real facts to roll on. The petitioner pleaded before the Enquiry Officer that there is no person by name Siva in existence, that the said person is only a fictitious person and no one introduced Siva to P.W.11, that the address and identity of Siva is not correct and there is no such person by name Siva known to the petitioner and the petitioner never moved with such person. It may be recalled here that in the preliminary written statement filed by him, the petitioner had admitted that the said Siva worked under him as Attender when he worked as Mobile Magistrate at Ongole and he was paying visits to him wherever he worked. The petitioner is a judicial officer who had put up more than a decade of service by the date of his suspension. He engaged an advocate. It would be preposterous to say that the petitioner and his advocate were oblivious of what is stated in the preliminary statement. The above said contention, we are sure, is a product of frustration. Since Siva was caught by the District Judge himself in the lodge and being

conscious of the fact that Siva made visits several times to Atmakur and to him as well and the admission made in the preliminary written statement, having no other go, to extricate himself, the petitioner appears to have advanced the above argument as a last resort. It is the irresistible conclusion that invariably emerges out of the conduct of the petitioner in turning *volte face* and making a somersault. The conduct on the part of the petitioner probabilises the link between him and Siva. If the petitioner was convinced that the person who posed as Siva in the lodge is an imposter, he would have produced the Siva known to him. He did not do so. In such circumstances, what conclusion would follow, except what is stated supra. In fact, another co-charged officer in his first written statement stated that he knew Siva as a car driver of the petitioner and due to Siva's closeness with the petitioner, all the staff members of the Court used to gather around Siva for their personal benefits, that Chandrasekhar Reddy also used to move closely with Siva and enjoyed drinks with him. When the District Judge was at the lodge, two advocates viz., Sri T.Siva Prasad, examined as P.W.2 and one Rama Krishna Reddy of Nandyal visited Naga lodge. As per the evidence of P.W.2 before the enquiry officer, Rama Krishna Reddy got information of the role of the middlemen of the Sub-Judge. At his instance, he accompanied the former to Naga lodge. They went to

Naga lodge to ascertain the facts whether the information received as to the role of the middlemen is true or not. Someone called him and his friend Rama Krishna Reddy. Then the District Judge enquired about their identity. He admits that he had stated in his statement before the District Judge that someone in the Court premises gave the address of Siva as Room No.12 of Naga lodge to his friend Rama Krishna Reddy and, therefore, both came to the said lodge. Since 1989, he was visiting Sub-Court, Atmakur.

P.W.3, Head Clerk of Sub-Court, Atmakur, gave a statement that Siva was visiting the chambers of the petitioner frequently and the said fact is not seriously disputed by the petitioner. P.Ws.4 and 6, who are court employees, also deposed about the visits of Siva, so also the evidence of P.W.7, the then Attender of Sub-Court, Atmakur and P.W.8, Typist, Sub-Court, Atmakur. In fact, many of the witnesses examined by P.W.11 did not turn up. It is on the basis of the evidence of the witnesses, who turned up before him, the enquiry officer gave findings on these two charges. Though their evidence is hearsay, it appears that there was wide talk about the corrupt practices of the petitioner. P.W.10, a freedom fighter of 71 years also vouches this. The evidence of P.W.8 is that Siva travelled to Kurnool along with the petitioner in a car once. P.W.1 is the Advocate who

passed on the information to the District Judge, Kurnool, about the corrupt activities. As per him, one V.Laxmidevamma gave Rs.8,000/- to the petitioner at Atmakur. The claimants told him that the petitioner would be bargaining with them at Kurnool and money was being received through an agent at Atmakur, camping in a lodge near the bus stand. It is common knowledge that no person, who gave bribe, would come and depose before a Judicial Officer. The evidence in cases of this type will always be in the form of circumstantial evidence. Why should an Attender, who served for just two months under the petitioner, make visits to him always, going to the places where the latter worked? It is for the petitioner to explain. The petitioner had not come forward with any explanation. On the other hand, as stated already, he made a complete somersault from what is stated in the preliminary written statement. The ways of a corrupt officer are inscrutable. When corruption transforms into addiction, it comes to light. As already stated, it is preponderance of probabilities that would weigh in the departmental enquiries. When the link between Siva and the petitioner is established beyond reasonable doubt, what emerges therefrom is that there was nexus between both. The fact that an attender who worked for just two months with the petitioner was accorded so much importance to visit him always wherever the officer worked itself speaks volumes. It is not as if Mr.Siva is known to

the petitioner since childhood. It is not the case of the petitioner that Siva belongs to his native place nor is it the case that he is related him. The fact that Siva used to stay in the lodge would certainly give rise to a strong presumption that the petitioner is involved in corrupt activities. The petitioner is entitled to rebut the presumption and tilt the balance of probabilities, but no attempt is made by him in that regard. On the other hand, he went to the extent of passing the blame to the District Judge and denying the very existence of Siva. From the conduct of the petitioner, a man of ordinary prudence and good sense even would certainly come to the above conclusion only. The argument that the enquiry officer is carried away with the enquiry report does not stand to scrutiny at all. For the foregoing reasons, we are not able to agree with the contention that there no evidence in this case to prove that the petitioner has not indulged in receiving illegal gratification through Siva. It is not the contention of the learned counsel for the petitioner that the proceedings against the delinquent officer went in a manner inconsistent with the rules of natural justice or in violation of the statutory rules. It would be farfetched to say that the conclusion or finding is such that no reasonable person would have ever reached.

The learned counsel for the petitioner contended that the charges are vague and except

surmises and conjectures, there is no direct evidence to establish that the petitioner received monies through Siva. In the connection, he cited a decision of the Apex Court in *M.V.BIJLANI V. UNION OF INDIA*[4]. This is not a case where charges are vague and findings are given on surmises and conjectures. Therefore, the ruling of the Apex Court has no application to the facts of the case. He also cited a decision of the Apex Court in *STATE OF MADRAS V. A.R.SRINIVASAN*[5] wherein it is observed that even in disciplinary proceedings, the charge against the public servant must be held to be proved before any punishment can be imposed on him. We have already given reasons for sustaining the findings given by the enquiry officer, which were accepted by the High Court. However, we have embarked upon discussion only to show how sustainable the findings of the enquiry officer are.

CHARGE NO.2:

The allegation is that the petitioner awarded more compensation than the claims made in the O.P., that he manipulated and made corrections in the records, took into account the post notified transactions in deciding valuation, clubbed land acquisition O.Ps arising from different awards pertaining to different villages and held common enquiry and made illegal, irregular classification

of lands, that an opportunity is not given for filing counter, prepared depositions in advance leaving space for filing O.P. numbers, that he did not give any importance to dispose of the old matters, etc.

The following is the conclusion arrived at by the enquiry officer:

> "Thus, it is very difficult to conclude on the basis of such judicial orders only that heavy compensation was awarded by the delinquent officer on extraneous reasons. The delinquent officer has discretion to accept certain sale deeds with cogent reasons and grant excessive compensation. As such by this judicial order alone it cannot be concluded that the delinquent officer received illegal gratification in awarding compensation as claimed by the claimants in excess. But when perused the above said judicial orders with the background of the delinquent officer as settled in Charge Nos.1 and 3, there is every reason to suspect that these orders were passed hastily and awarded excessive compensation as required by the claimants for extraneous reasons."

The enquiry officer found that some of the depositions in O.Ps are in carbon copies and they appear to have been prepared in advance leaving some space for filling up O.P numbers and such other particulars in ink and number of judgments are cyclostyled by filling the blanks in ink and all the awards relevant to a batch have not been marked in all cases; that most of the orders appear to have been prepared hastily and the same may be under the influence of extraneous circumstances. It is also contended that there is no necessity to give an

opportunity to the Assistant Government Pleader to file counters. For finding guilty on this charge, the enquiry officer drew support from the findings given on Charge Nos.1 and 3. All the allegations made in Charge No.2 need not be proved item by item. We are not able find fault with the enquiry officer on Charge No.3 also that the officer is guilty of some commissions and omissions. We need not take the trouble of bolstering the pages of this order. There is no need for all the witnesses to speak falsehood against the officer. None of them inimically deposed towards him. There is abundant relevant material on record to sustain the findings. Even if two views are possible, the law is that this Court shall not interfere by substituting its own satisfaction or opinion for satisfaction or opinion of the authority exercising the power. The sufficiency or adequacy of evidence cannot be considered by this Court. It is province of the authority, which deals with the case. Hence, we cannot find fault with the reasoning given by the inquiry officer on Charge No.2 also.

Coming to the penalty imposed, as has been held in *RAM SINGH's* case (3 supra) that even a single act of misconduct, if found to be grievous nature, may justify dismissal from service. In view of the gravity of the misconduct involved, we do not find any valid reason or ground to interfere with the penalty imposed. We cannot

take a lenient view where corrupt activities of a judicial officer are established. Taking a lenient view in such cases is to give a blow to the institution, which has to survive on public confidence. Once the public confidence is eroded, the citadel begins to crumble, spelling a death knell to the safety and survival of the polity.

For the foregoing reasons, we do not see any valid grounds calling for interference and the writ petition is accordingly dismissed with costs.

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BILAL NAZKI, J

Dt. –04-2007

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M.VENKATESWARA REDDY, J

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[1] *(1995) 6 SCC 749*
[2] *AIR 2000 SC 22*
[3] *(1992) 4 SCC 54*
[4] *(2006) 5 SCC 88*
[5] *AIR 1966 SC 1827*